

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JUAN TAJALLE,

Plaintiff,

v.

CITY OF SEATTLE, SEATTLE PUBLIC
LIBRARY, OFFICER SAM 8 a.k.a. JOHN
DOE #1, and JOHN DOE #2,

Defendants.

No. C07-1509Z

ORDER

THIS MATTER comes before the Court on defendants' motion for partial summary judgment and dismissal. Having reviewed all papers filed in support of and in opposition to defendants' motion, the Court does hereby ORDER:

- (1) Defendants' motion, docket no. 11, is GRANTED IN PART and DENIED IN PART;
- (2) Plaintiff's Fourth Amendment claims, as alleged in his second and third causes of action, are DISMISSED without prejudice;
- (3) To the extent plaintiff asserts a procedural due process claim in his fourth cause of action, such claim is DISMISSED without prejudice;
- (4) In all other respects, defendants' motion, docket no. 11, is DENIED;

(5) Plaintiff's related motion for a continuance pursuant to Fed. R. Civ. P. 56(f), docket no. 16, is STRICKEN as moot; and

(6) The Clerk is directed to send a copy of this Order to all counsel of record.

Background

Plaintiff brings this action against the City of Seattle, the Seattle Public Library (the "Library"), and two security officers, alleging physical injury and violation of constitutional rights resulting from his expulsion and exclusion from the downtown branch of the Library. Plaintiff has alleged seven causes of action, the first five of which are brought pursuant to 42 U.S.C. § 1983: (i) Violation of First Amendment (freedom of speech and assembly); (ii) Violation of Fourth Amendment (unreasonable seizure); (iii) Violation of Fourth Amendment (unreasonable force); (iv) Violation of Fourteenth Amendment (due process); (v) Municipal Liability; (vi) Negligence; and (vii) Violation of Washington's Law Against Discrimination, specifically RCW 49.60.215, which prohibits discrimination at places of public resort.

The parties have presented widely divergent recitations of the underlying facts. Defendants, however, contend that, even under plaintiff's version of events, summary judgment and dismissal are warranted. Thus, for purposes of considering defendants' motion, the Court has relied primarily on plaintiff's account of the incident at issue.

Plaintiff Juan Tajalle, who is of Portuguese and Polynesian descent, suffers from a sinusitis condition in his left nostril, degenerative joint disease of the right shoulder (adhesive capsulitis), and various other ailments, including major depression and recurrent severe headaches, which have rendered him "disabled" within the meaning of the Social Security Act. Tajalle Decl. at 1:20, 1:23-26, 3:7-11 (docket no. 17); Social Security Administration Decision dated July 7, 1992, Exh. to Tajalle Decl. On June 14, 2006, while

1 plaintiff was on the first floor of the Library, he sneezed.¹ Tajalle Decl. at 1:22-24. Plaintiff
 2 then noticed two security guards were laughing. *Id.* at 1:26-27. Plaintiff observed that the
 3 guards were in the process of ejecting a homeless person from the Library, and plaintiff
 4 attempted to show support for this person by saying “hi.” *Id.* at 1:27-2:9. Plaintiff asked the
 5 guards why they were laughing. *Id.* at 2:12. According to plaintiff, he spoke in a quiet tone,
 6 but he was warned by one of the guards that, if he continued being disruptive, he would be
 7 escorted out of the Library. *Id.* at 2:12-16.

8 Plaintiff alleges that he was never loud and did not use any expletives, but he was
 9 ordered by one of the guards to leave the Library. *Id.* at 2:17-18, 21. A guard walked ahead
 10 of plaintiff, toward the exit, and entered the revolving door. *Id.* at 2:23-28. Plaintiff
 11 protested that he could not use the revolving door, but then squeezed himself into the same
 12 compartment as the guard. *Id.* at 2:24-3:5; *see* Rambayon Decl. at ¶ 3 (docket no. 14). As
 13 the door rotated, plaintiff’s backpack became wedged between the edge of the stall and the
 14 frame, and plaintiff fell² on his right shoulder, dislodging the Transcutaneous Electrical
 15 Nerve Stimulation (“TENS”) device that the Veterans Administration Hospital had provided
 16 to plaintiff to block or alleviate the pain in his shoulder. Tajalle Decl. at 3:4-11.

17 Plaintiff claims that, when he reached over to get his blood pressure medication out of
 18 his backpack, the guard kicked the backpack away and placed his foot between plaintiff and
 19 _____

20 ¹ Although plaintiff apparently agrees with defendants that the sneeze triggered the incident, plaintiff does not
 21 acknowledge the associated behavior that defendants attribute to him. Defendants recount that, after the
 22 sneeze, a disabled white male patron of the Library said “Gesundheit.” Incident Report at 1 (spelling the
 23 German phrase as “gazoontike”), Exh. 1 to Adams Decl. (docket no. 15); Rambayon Decl. at ¶ 2 (docket
 24 no. 14). As the other patron walked past plaintiff, plaintiff leaned over and shouted, “Are you f—ing with
 25 me?” *Id.* The man indicated that he was not and walked away as quickly as possible. Incident Report at 1.
 Plaintiff then yelled at the security guards, “What are you smiling at?” Incident Report at 1; Rambayon Decl.
 at ¶ 2. When the guards did not answer, plaintiff approached the security desk and shouted, “Why are you
 26 f—ing with me” and “What the f— are you laughing at?” *Id.* According to defendants, verbal or physical
 harassment of other patrons or staff and disruption via loud talking or screaming constitute violations of the
 Library’s rules of conduct. Exh. 4 to Gardner Decl. (docket no. 13).

² The security guard involved, Ulysses Rambayon, alleges that both he and plaintiff fell, but plaintiff asserts
 that the guard did not fall. *Compare* Rambayon Decl. at ¶ 3 *with* Tajalle Decl. at 3:6-7.

the backpack. *Id.* at 3:13-17. Plaintiff asserts that he repeatedly told the guard he needed his medicine, but the guard ignored his pleas for help. *Id.* at 3:14-19. Seattle Fire Department medics arrived at the scene.³ *Id.* at 3:24-25. While waiting for an ambulance to transport plaintiff to a hospital, the other security guard obtained plaintiff's name and information and completed an exclusion order, barring plaintiff from the Library for fourteen (14) days. *Id.* at 3:27-4:5; *see* Incident Report at 2, Exh. 1 to Adams Decl. (docket no. 15). The exclusion order was subsequently extended for six months, through December 13, 2006. Gardner Decl. at ¶ 4 (docket no. 13). Plaintiff was advised of his right to request an administrative review, but he never contested the exclusion order. *Id.* at ¶¶ 3 & 5; Tajalle Decl. at 4:15-17.

Discussion

A. First Amendment Claim

With regard to plaintiff's first cause of action, defendants move for summary judgment on the ground that plaintiff has not and cannot demonstrate an intent on the part of the security guards to inhibit plaintiff's political speech. As the movants, defendants bear the burden of demonstrating the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A fact is material if it might affect the outcome of the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In considering a motion for summary judgment, the Court must believe the opposing party's affirmative evidence and draw all "justifiable inferences" in its favor. *Id.* at 255, 257. To

³ Plaintiff indicates that Officer Rambayon inquired whether plaintiff desired medical aid, but Officer Adams stated in his report that he was the person who asked plaintiff if treatment was required and he was the person who called 911. Tajalle Decl. at 3:15; Incident Report at 2, Exh. 1 to Adams Decl. In his report, Officer Adams also recorded the following exchange:

Officer Rambayon:	Did I cause you injury?
Juan Tajalle:	No, man. It wasn't your fault. It was an accident.

Incident Report at 2, Exh. 1 to Adams Decl. Finally, Officer Adams recounted in his report that, after two Seattle Fire Department medics pulled plaintiff up from the ground by grabbing his shoulders, the medics opined that plaintiff's shoulder was not, as he claimed, broken, and that, after having been deposited outside the Library, plaintiff engaged in an argument with the medics. *Id.*; *see* Seattle Fire Department Medical Incident Report at 2, Exh. 1 to Cowan Decl. (docket no. 12) ("no obvious injury to shoulder").

1 demonstrate a First Amendment violation under 42 U.S.C. § 1983, a plaintiff must show that
2 the defendant's actions deterred or chilled the plaintiff's political speech and that inhibiting
3 plaintiff's speech was a "substantial or motivating factor" in the defendant's conduct.

4 Mendocino Env'tl. Ctr. v. Mendocino County, 192 F.3d 1283, 1300 (9th Cir. 1999).

5 Although both security guards have submitted declarations indicating that they were
6 simply enforcing the Library's conduct rules and had no intent to deprive plaintiff of his
7 rights, see Adams Decl. at ¶ 2; Rambayon Decl. at ¶ 5, the facts alleged by plaintiff and the
8 inferences to be drawn therefrom give rise to a genuine issue concerning whether inhibiting
9 plaintiff's speech was a substantial or motivating factor in the guards' behavior. According
10 to plaintiff, he was not loud, abusive, or profane in his conduct toward the guards, and he
11 approached them in an effort to show support for a homeless person he believed the guards
12 were treating inappropriately. Defendants present contrary facts, but the Court may not
13 weigh credibility in deciding a motion for summary judgment, and it must draw all
14 reasonable inferences in favor of the non-movant, here plaintiff. Assuming the truth of
15 plaintiff's assertion that he spoke quietly and politely to the security guards, a justifiable
16 inference must be drawn that the security guards had no basis for directing plaintiff to leave
17 the Library and that their reason for doing so was to prevent him from, or to retaliate against
18 him for, supporting the harried homeless person, arguably a form of political speech.

19 Therefore, contrary to defendants' suggestion, the disputed facts are indeed material, and the
20 Court DENIES defendants' motion for summary judgment as to plaintiff's First Amendment
21 claim. As a result, the Court need not address plaintiff's alternative request for a
22 continuance pursuant to Fed. R. Civ. P. 56(f), and the Court STRIKES plaintiff's motion as
23 moot.

24 **B. Other Section 1983 Claims**

25 As to plaintiff's remaining § 1983 claims, defendants move for dismissal pursuant to
26 Rule 12(b)(6). Although a complaint challenged by a Rule 12(b)(6) motion to dismiss need
not provide detailed factual allegations, it must offer "more than labels and conclusions" and

1 contain more than a “formulaic recitation of the elements of a cause of action.” *Bell*
2 *Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007). The complaint must indicate
3 more than mere speculation of a right to relief. *Id.* at 1965. When a complaint fails to
4 adequately state a claim, such deficiency should be “exposed at the point of minimum
5 expenditure of time and money by the parties and the court.” *Id.* at 1966. A complaint may
6 be lacking for one of two reasons: (i) absence of a cognizable legal theory, or (ii)
7 insufficient facts under a cognizable legal claim. *Robertson v. Dean Witter Reynolds, Inc.*,
8 749 F.2d 530, 534 (9th Cir. 1984). In ruling on a motion to dismiss, the Court must assume
9 the truth of the plaintiff’s allegations and draw all reasonable inferences in the plaintiff’s
10 favor. *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). The question for the
11 Court is whether the facts in the complaint sufficiently state a “plausible” ground for relief.
12 *Twombly*, 127 S. Ct. at 1974. If the Court considers matters outside the complaint, it must
13 convert the motion into one for summary judgment. Fed. R. Civ. P. 12(d). If the Court
14 dismisses the complaint or portions thereof, it must consider whether to grant leave to
15 amend. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).

16 Defendants contend that plaintiff has failed to allege facts sufficient to state a claim
17 for Fourth or Fourteenth Amendment violations. As to the Fourth Amendment claims,
18 defendants are correct, but plaintiff appears to provide enough to establish a plausible ground
19 for relief under a substantive due process analysis. Although both parties have provided
20 materials outside the complaint, the Court has not considered them for purposes of
21 defendants’ 12(b)(6) motion, and it need not convert the motion into one for summary
22 judgment.

23 With regard to the Fourth Amendment claims, plaintiff’s complaint alleges merely
24 that “[t]hrough threats of force and violence, the two officers attempted to remove the
25 plaintiff from the library,” that although “the plaintiff complained that he was disabled and
26 would have a hard time going through the revolving door,” the security guard “demanded

1 that he go through the door anyway,” and that “[a]s a result of trying to go through the door,
2 the plaintiff got trapped in the revolving door and fell.” Complaint at ¶ 10 (docket no. 4).
3 Plaintiff nowhere asserts that the security guards detained him, handcuffed him, indicated in
4 any way that he was not free to leave, displayed a weapon, or touched him in any manner.
5 To establish a Fourth Amendment violation for purposes of § 1983, plaintiff must show, at a
6 minimum, that he was seized, meaning that a governmental official terminated his “freedom
7 of movement through means intentionally applied.” See Scott v. Harris, 127 S. Ct. 1769,
8 1776 (2007). To prevail on a claim of excessive force, plaintiff must establish that the
9 governmental official seizing him acted in a manner that was not objectively reasonable. See
10 id. at 1776-79 (concluding that a police officer’s ramming of a fleeing motorist’s car, which
11 resulted in a crash that rendered the motorist quadriplegic, was objectively reasonable in
12 light of the danger the speeding motorist posed to innocent bystanders). Here, plaintiff has
13 not alleged any facts to support a finding that he was seized within the meaning of the Fourth
14 Amendment or that any force was exerted upon him, let alone an unreasonable amount of
15 force. Thus, the Court GRANTS defendants’ motion to dismiss plaintiff’s second and third
16 causes of action; however, the dismissal is without prejudice because plaintiff might be able
17 to cure the defects. See Lopez, 203 F.3d at 1130 (leave to amend should be granted “if it
18 appears at all possible” that the plaintiff can correct the defect at issue).

19 In addressing plaintiff’s Fourteenth Amendment claim, defendants discuss both
20 substantive and procedural due process. Plaintiff’s complaint, however, does not allege a
21 violation of procedural due process, and plaintiff apparently concedes that, for his own
22 personal reasons, he did not take advantage of his right to a post-deprivation hearing. See
23 Complaint at ¶¶ 25-28 (alleging merely that plaintiff has a right “to remain in a public place
24 of his choice”); Tajalle Decl. at 4:15-17 (docket no. 17). In the response brief, however,
25 plaintiff’s counsel refers to the balancing test to be performed in assessing whether a pre-
26 deprivation hearing is required by the due process clause; he does not, however, cite any

1 authorities or provide any analysis to support a contention that plaintiff was in any way
 2 entitled to a hearing before being expelled and/or excluded from the Library. Indeed,
 3 constitutional jurisprudence suggests otherwise. *See Zinermon v. Burch*, 494 U.S. 113, 132
 4 (1990) (“[I]n situations where a predeprivation hearing is unduly burdensome in proportion
 5 to the liberty interest at stake, . . . or where the State is truly unable to anticipate and prevent
 6 a random deprivation of a liberty interest, postdeprivation remedies might satisfy due
 7 process.”). Thus, to the extent that, in his fourth cause of action, plaintiff asserts a
 8 procedural due process claim, the Court GRANTS defendants’ motion to dismiss such claim
 9 without prejudice.

10 On the other hand, the Court concludes that plaintiff’s substantive due process claim
 11 satisfies the “plausibility” standard of Rule 12(b)(6). To establish a substantive due process
 12 violation, plaintiff must show either (i) deprivation of life, liberty, or property in a manner
 13 that “shocks the conscience” or “interferes with rights implicit in the concept of ordered
 14 liberty,” *Nunez v. City of Los Angeles*, 147 F.3d 867, 871 (9th Cir. 1998), or
 15 (ii) infringement of a fundamental liberty interest⁴ when the infringement is not narrowly
 16 tailored to serve a compelling state interest, *Washington v. Glucksberg*, 521 U.S. 702, 721
 17 (1997). Defendants do not appear to dispute that plaintiff has a liberty interest in using the
 18 Library⁵; defendants simply contend that plaintiff’s rights were not deprived in a manner that
 19 shocks the conscience. In making their argument, however, defendants ignore the premise of
 20 plaintiff’s case. Plaintiff alleges that, for either no reason or an impermissible reason, the

21 ⁴ Plaintiff does not assert, and would be unlikely to prevail on a claim, that access to a public library is a
 22 fundamental interest on par with the right to marry, to have children, to marital privacy, or to terminate a
 23 pregnancy. As the Supreme Court has repeatedly counseled, the utmost care must be exercised in expanding
 24 the scope of fundamental rights, lest the matter at issue be placed “outside the arena of public debate and
 25 legislative action” and “subtly transformed into the policy preferences” of the members of the judiciary.
Washington v. Glucksberg, 521 U.S. 702, 720 (1997) (holding that the right to assistance in committing
 suicide is not a fundamental liberty interest).

26 ⁵ *See Hill v. Derrick*, 240 Fed. Appx. 935 (3rd Cir. 2007) (recognizing that district court had concluded the
 plaintiff possessed, under state law, a statutorily-created liberty interest in using the public library, but
 affirming the summary judgment against plaintiff without reaching the issue because any due process rights
 plaintiff might have had were not violated).

1 Library's security guards expelled him from the premises, that they demanded he use the
2 revolving door despite his disability, which contributed to his physical injury, and that, when
3 he needed to access the medications in his backpack, one of the security guards kicked the
4 backpack out of his reach. Complaint at ¶¶ 8-12. Although defendants' evidence strongly
5 suggests otherwise, at this juncture, plaintiff has presented a sufficient case of deliberate
6 indifference to ward off dismissal pursuant to Rule 12(b)(6). See County of Sacramento v.
7 Lewis, 523 U.S. 833, 849-50 (1998) (recognizing that deliberate indifference to medical
8 needs can satisfy the "shocks the conscience" standard). Thus, the Court DENIES
9 defendants' motion to dismiss plaintiff's fourth cause of action.

10 As a corollary to their motion to dismiss plaintiff's § 1983 claims, defendants request
11 that the Court also dismiss plaintiff's fifth cause of action, which alleges municipal liability
12 for the actions of the Library and its personnel. Defendants also assert that the security
13 guards at issue have qualified immunity from suit. In addressing defendants' arguments, the
14 threshold question for the Court is whether "[t]aken in the light most favorable to the party
15 asserting the injury, do the facts alleged show the officer's conduct violated a constitutional
16 right." Scott, 127 S. Ct. at 1774. If the requisite constitutional violation is adequately
17 pleaded, then the Court must consider whether the right at issue "was clearly established" in
18 light of "the specific context of the case," id., and whether "a reasonable public official could
19 have believed that the alleged conduct was lawful," Hydrick v. Hunter, 500 F.3d 978, 988-89
20 (9th Cir. 2007). Defendants rely solely on a contention that no constitutional violation
21 occurred, and they have not briefed the remaining two inquiries necessary to a determination
22 of qualified immunity. For the reasons described earlier, defendants have not established the
23 absence of genuine issues of material fact necessary to warrant summary judgment against
24 plaintiff on his First Amendment claim or the implausibility needed to justify dismissal of
25 plaintiff's substantive due process claim. Thus, the Court DENIES defendants' motion to
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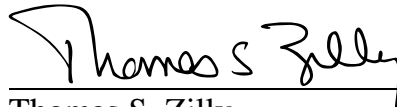
1 dismiss on the ground of qualified immunity, but without prejudice to defendants reasserting
2 such defense in the event plaintiff is granted leave to amend his complaint or in a motion for
3 summary judgment brought after the parties have conducted further discovery.

4 **C. State Law Claims**

5 Defendants move for dismissal of plaintiff's state law claims pursuant to 28 U.S.C.
6 § 1367(c)(3), which permits the Court to decline to exercise supplemental jurisdiction when
7 it has "dismissed all claims over which it has original jurisdiction." In light of the Court's
8 rulings concerning plaintiff's § 1983 claims, the Court DENIES defendants' motion to
9 dismiss plaintiff's state law claims.

10 IT IS SO ORDERED.

11 DATED this 7th day of March, 2008.

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14 Thomas S. Zilly
15 United States District Judge
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